

Assembly Bill No. 1839

Passed the Assembly August 28, 2004

Chief Clerk of the Assembly

Passed the Senate August 28, 2004

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Section 2982.5 of, and to add Sections 2982.2 and 2982.10 to, the Civil Code, and to amend Section 11713.1 of, and to add Section 11713.16 to, the Vehicle Code, relating to consumers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1839, Montanez. Motor vehicle sale contracts: cooling off period.

Existing law governs motor vehicle conditional sale contracts, as defined. These provisions require sellers of motor vehicles to make certain disclosures to buyers, including that existing law does not provide for a “cooling off” period, or an opportunity for a purchaser to cancel the contract for any reason within a specified time period, with respect to a conditional sale contract for the purchase of a motor vehicle. A willful violation of these provisions is a misdemeanor.

This bill would enact the Car Buyer’s Bill of Rights. The bill would provide with respect to a car loan, conditional sale contract, or any other mode of vehicle purchase financing, that a seller of motor vehicles provide a buyer with specified information relating to credit scores and aftermarket items, as specified. The bill would prohibit a seller, in consideration of an assignment of a conditional sale contract, from receiving or accepting any payment or credit as a finance charge in excess of specified amounts. Because a violation of these provisions would be a misdemeanor, the bill would create a new crime, thereby imposing a state-mandated local program.

Existing law makes it a violation of the Vehicle Code, punishable as a misdemeanor, for the holder of a dealer’s license to do, or fail to do, specified actions with regard to the advertising and sale of motor vehicles.

This bill would expand those provisions to define a “certified” used motor vehicle and to prohibit a dealer from advertising or selling that vehicle as “certified,” or as described using similar terms to imply that the seller has inspected the vehicle and has corrected any defects found, unless it comes within that definition and meets specified criteria. Because the violation of these



provisions would be a misdemeanor, the bill would create a new crime, thereby imposing a state-mandated local program.

This bill would also prohibit adding charges to a sale or lease contract without the buyer's consent and would prohibit inflating a payment or extending the maturity of contract for the purpose of disguising the actual charges for goods or services. Because the willful violation of these provisions would be a misdemeanor, the bill would create a new crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. (a) This act shall be known and may be cited as the "Car Buyer's Bill of Rights."

(b) It is the intent of the Legislature to place limits and restrictions on motor vehicle dealers licensed pursuant to Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 of the Vehicle Code. Nothing in this act is intended to change or limit the rights or defenses available under current law to an assignee who obtains a conditional sales contract for value without notice of any claim or defense against him or her by any other person.

SEC. 2. Section 2982.2 is added to the Civil Code, to read:

2982.2. (a) If the seller of a motor vehicle arranges a loan, arranges financing, makes a credit sale, sells or otherwise transfers a conditional sale contract, or makes a similar transaction for the buyer, the seller shall clearly and conspicuously disclose to the buyer each buyer's three-digit credit score, as defined in Section 1785.15.1, obtained from a credit reporting agency, on a separate sheet of paper, at least 8½ inches wide and 11 inches long, with the name and address of the seller at the top, written in the same language as that used in the contract, in at least 10-point boldface type, reading as follows:



“Notice to buyer of vehicle with vehicle identification number ____: Your credit score obtained by the dealer to evaluate your credit history for this purchase, as calculated by ____, is ____.”

(b) If the seller of a motor vehicle arranges a loan, arranges financing, makes a credit sale, sells or otherwise transfers a conditional sale contract, or makes a similar transaction and the purchase or lease includes the sale of service contracts or maintenance plans, insurance products, theft deterrent or protection products, “GAP” protection products, and exterior or interior surface protection, the seller shall provide the buyer a clear and conspicuous written disclosure regarding each item, in the same language as that used in the contract, in at least 12-point boldface type, on a page at least 8½ inches wide by 11 inches long, that includes the name and address of the seller at the top, and the date of the contract and reading as follows:

“Notice to the buyer of vehicle with vehicle identification number ____: (1) You have agreed to purchase the following additional item: _____. (2) The price of this item if you pay cash is: \$_____. (3) If included in the financing of the vehicle, your actual monthly cost to finance this item is: \$_____/month, and your total cost for this item over the life of the credit agreement is: \$_____.”

(c) For the purposes of this section, “seller” means a person primarily engaged in the business of selling or leasing motor vehicles under any motor vehicle sale contract, including a conditional sale contract. “Seller” does not include a private individual who is not required to be licensed to sell vehicles in California.

SEC. 3. Section 2982.5 of the Civil Code is amended to read:

2982.5. (a) This chapter may not be deemed to affect a loan, or the security therefor, between a purchaser of a motor vehicle and a supervised financial organization, other than the seller of the motor vehicle, all or a portion of which loan is used in connection with the purchase of a motor vehicle. As used in this chapter, “supervised financial organization” means a person organized, chartered, or holding a license or authorization certificate under a law of this state or the United States to make loans and subject to supervision by an official or agency of this state or the United States.

(b) This chapter may not be deemed to prohibit the seller’s assisting the buyer in obtaining a loan upon any security from any



third party to be used as a part or all of the downpayment or any other payment on a conditional sale contract or purchase order; provided that the conditional sale contract sets forth on its face the amount of the loan, the finance charge, the total thereof, the number of installments scheduled to repay the loan and the amount of each installment, that the buyer may be required to pledge security for the loan, which security shall be mutually agreed to by the buyer and the lender and notice to the buyer in at least 8-point type that he or she is obligated for the installment payments on both the conditional sale contract and the loan. The seller may not provide any security or other guarantee of payment on the loan, nor shall the seller receive any commission or other remuneration for assisting the buyer to obtain the loan. If the buyer obligates himself or herself to purchase, or receives possession of, the motor vehicle prior to securing the loan, and if the buyer upon appropriate application for the loan is unable to secure the loan, on the conditions stated in the conditional sale contract, the conditional sale contract or purchase order shall be deemed rescinded and all consideration thereupon shall be returned by the respective parties without demand.

(c) The proceeds of any loan payable to the seller after the date of the contract but prior to the due date of the second payment otherwise scheduled thereunder may not be subject to a finance charge and the amount thereof shall be disclosed pursuant to subparagraph (D) of paragraph (6) of subdivision (a) of Section 2982.

(d) This chapter may not be deemed to prohibit the seller's assisting the buyer in obtaining a loan from any third party to be used to pay for the full purchase price, or any part thereof, of a motor vehicle, if each of the following provisions applies:

(1) The loan may be upon any security, but except as provided in paragraph (2), the loan may not be secured in whole or in part by a lien on real property. Any lien on real property taken in violation of this section shall be void and unenforceable.

(2) A lien on real property may be taken to secure a loan of seven thousand five hundred dollars (\$7,500) or more used to pay the full purchase price, or any part thereof, of a recreational vehicle, as defined in Section 18010 of the Health and Safety Code, which is not less than 20 feet in length.



(3) The provisions of Sections 2983.2, 2983.3, and 2984.4 shall apply to the loan, but may not authorize the lender or the lender's successor in interest to charge for any costs, fees, or expenses or to obtain any other benefit which the lender is prohibited from charging or obtaining under any regulatory law applicable to the lender. Notwithstanding this paragraph, the provisions of Sections 2983.2 and 2983.3 may not apply to a loan made by a lender licensed under Division 9 (commencing with Section 22000) or Division 10 (commencing with Section 24000) of the Financial Code.

(4) The lender or the lender's successor in interest shall be subject to all claims and defenses which the buyer could assert against the seller, but liability may not exceed the amount of the loan.

(5) If the buyer becomes obligated to purchase, or receives possession of, the motor vehicle prior to obtaining the loan, the agreement between the buyer and the seller shall set forth on its face the amount of the loan, the finance charge, the total thereof, the number of installments scheduled to repay the loan and the amount of each installment, that the buyer may be required to pledge security for the loan, which security must be mutually agreed to by the buyer and the lender, and notice to the buyer in at least 8-point type that the buyer is obligated for the installment payments on the loan and for any payments which may be due on the agreement between the buyer and the seller. The seller may not provide any security or other guarantee of payment on the loan, and the seller may not receive any commission or other remuneration for assisting the buyer to obtain the loan. If the buyer upon proper application for the loan is unable to obtain the loan, on the condition stated in the agreement between the buyer and the seller, the agreement shall be deemed rescinded and all consideration thereupon shall be returned by the respective parties without demand.

(6) Any waiver by the buyer of the provisions of this section shall be void and unenforceable.

This subdivision does not apply to state or federally chartered banks and savings and loan associations and may not be construed to affect existing law regarding a seller's assisting a buyer to obtain a loan from a bank or savings and loan association or any loan obtained by the buyer from those lenders.



SEC. 4. Section 2982.10 is added to the Civil Code, to read:

2982.10. (a) In consideration of an assignment of a conditional sale contract, the seller may not receive or accept from the assignee any payment or credit based upon any amount collected or received, or to be collected or received, under the contract as a finance charge except to the extent the payment or credit does not exceed the amount that would be calculated in accordance with Regulation Z, whether or not Regulation Z applies to the contract, as the contract's finance charge using, for purposes of the calculation, an annual percentage rate equal to $2\frac{1}{2}$ percent for a contract having an original scheduled term of 60 monthly payments or less or 2 percent for a contract having an original scheduled term of more than 60 monthly payments.

(b) This section does not apply in any of the following circumstances:

(1) Assignment with full recourse or under other terms requiring the seller to bear the entire risk of financial performance of the buyer.

(2) Assignment more than six months following the date of the conditional sale contract.

(3) Isolated instances resulting from bona fide errors that would otherwise constitute a violation of subdivision (a) if the seller maintains reasonable procedures to guard against any such errors and promptly upon notice of the error remits to the buyer any consideration received in excess of that permitted by subdivision (a).

(c) For purposes of this section, "seller" means a person primarily engaged in the business of selling or leasing motor vehicles under a conditional sales contract to a consumer.

SEC. 5. Section 11713.1 of the Vehicle Code is amended to read:

11713.1. It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) Advertise any specific vehicle for sale without identifying the vehicle by its model, model-year, and either its license number or that portion of the vehicle identification number that distinguishes the vehicle from all other vehicles of the same make, model, and model-year. Model-year is not required to be advertised for current model-year vehicles. Year models are no longer current when ensuing year models are available for

purchase at retail in California. Any advertisement that offers for sale a class of new vehicles in a dealer's inventory, consisting of five or more vehicles, that are all of the same make, model, and model-year is not required to include in the advertisement the vehicle identification numbers or license numbers of those vehicles.

(b) Advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except taxes, vehicle registration fees, the California tire fee, as defined in Section 42885 of the Public Resources Code, emission testing fees not exceeding fifty dollars (\$50), actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, finance charges, and any dealer document preparation charge. The dealer document preparation charge shall not exceed forty-five dollars (\$45).

(c) (1) Exclude from an advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, and any dealer document preparation charge.

(2) The obligations imposed by paragraph (1) shall be satisfied by adding to the advertisement a statement containing no abbreviations and that is worded in substantially the following form: "Plus government fees and taxes, any finance charges, any dealer document preparation charge, and any emission testing charge."

(3) For purposes of paragraph (1), "advertisement" means any advertisement in a newspaper, magazine, or direct mail publication that is two or more columns in width or one column in width and more than seven inches in length, or on any Web page of a dealer's Web site that displays the price of a vehicle offered for sale on the Internet, as that term is defined in paragraph (6) of subdivision (e) of Section 17538 of the Business and Professions Code.

(d) Represent the dealer document preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) Fail to sell a vehicle to any person at the advertised total price, exclusive of taxes, vehicle registration fees, the California



tire fee, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, mobilehome escrow fees, the amount of any city, county, or city and county imposed fee or tax for a mobilehome, and any dealer document preparation charge, which charges shall not exceed forty-five dollars (\$45) for the document preparation charge and not to exceed fifty dollars (\$50) for emission testing plus the actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed. Advertised vehicles shall be sold at or below the advertised total price, with statutorily permitted exclusions, regardless of whether the purchaser has knowledge of the advertised total price.

(f) (1) Advertise for sale, sell, or purchase for resale any new vehicle of a line-make for which the dealer does not hold a franchise.

(2) This subdivision does not apply to any transaction involving any of the following:

(A) A mobilehome.

(B) A recreational vehicle as defined in Section 18010 of the Health and Safety Code.

(C) A commercial coach, as defined in Section 18001.8 of the Health and Safety Code.

(D) An off-highway motor vehicle subject to identification as defined in Section 38012.

(E) A manufactured home.

(F) A new vehicle that will be substantially altered or modified by a converter prior to resale.

(G) A commercial vehicle with a gross vehicle weight rating of more than 10,000 pounds.

(H) A vehicle purchased for export and exported outside the territorial limits of the United States without being registered with the department.

(g) Sell a park trailer, as specified in Section 18009.3 of the Health and Safety Code, without disclosing in writing to the purchaser that a park trailer is required to be moved by a transporter or a licensed manufacturer or dealer under a permit



issued by the Department of Transportation or a local authority with respect to highways under their respective jurisdictions.

(h) Advertise free merchandise, gifts, or services provided by a dealer contingent on the purchase of a vehicle. The term “free” includes merchandise or services offered for sale at a price less than the seller’s cost of the merchandise or services.

(i) Advertise vehicles, and related goods or services, at a specified dealer price, with the intent not to supply reasonably expectable demand, unless the advertisement discloses the number of vehicles in stock at the advertised price. In addition, whether or not there are sufficient vehicles in stock to supply a reasonably expectable demand, when phrases such as “starting at,” “from,” “beginning as low as,” or words of similar import are used in reference to an advertised price, the advertisement shall disclose the number of vehicles available at that advertised price.

For purposes of this subdivision, in any newspaper advertisement for a vehicle that is two model-years old or newer, the actual phrase that states the number of vehicles in stock at the advertised price shall be (1) printed in a type size that is at least equal to one-quarter of the type size, and in the same style and color of type, used for the advertised price, however, in no case shall the phrase be printed in less than 8-point type size, and (2) be disclosed immediately above, below, or beside the advertised price without any intervening words, pictures, marks, or symbols.

The disclosure required by this subdivision is in addition to any other disclosure required by this code or any regulation regarding identifying vehicles advertised for sale.

(j) Use the term “rebate” or similar words such as “cash back” in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.

(k) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, “cash price” has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(l) Advertise a guaranteed trade-in allowance.



(m) Misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) (1) Use the terms “invoice,” “dealer’s invoice,” “wholesale price,” or similar terms that refer to a dealer’s cost for a vehicle in an advertisement for the sale of a vehicle or advertise that the selling price of a vehicle is above, below, or at either of the following:

(A) The manufacturer’s or distributor’s invoice price to a dealer.

(B) A dealer’s cost.

(2) This subdivision does not apply to either of the following:

(A) Any communication occurring during face-to-face negotiations for the purchase of a specific vehicle if the prospective purchaser initiates a discussion of the vehicle’s invoice price or the dealer’s cost for that vehicle.

(B) Any communication between a dealer and a prospective commercial purchaser that is not disseminated to the general public. For purposes of this subparagraph, a “commercial purchaser” means a dealer, lessor, lessor-retailer, manufacturer, remanufacturer, distributor, financial institution, governmental entity, or person who purchases 10 or more vehicles during a year.

(o) Violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 (commencing with Section 238) of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(p) Make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is “fully factory equipped.”

(q) Affix on any new vehicle a supplemental price sticker containing a price that represents the dealer’s asking price which exceeds the manufacturer’s suggested retail price unless all of the following occur:

(1) The supplemental sticker clearly and conspicuously discloses in the largest print appearing on the sticker, other than the print size used for the dealer’s name, that the supplemental sticker price is the dealer’s asking price, or words of similar import, and that it is not the manufacturer’s suggested retail price.



(2) The supplemental sticker clearly and conspicuously discloses the manufacturer's suggested retail price.

(3) The supplemental sticker lists each item which is not included in the manufacturer's suggested retail price, and discloses the additional price of each item. If the supplemental sticker price is greater than the sum of the manufacturer's suggested retail price and the price of the items added by the dealer, then the supplemental sticker price shall set forth that difference and describe it as "added mark-up."

(r) Advertise any underselling claim, such as "we have the lowest prices" or "we will beat any dealer's price," unless the dealer has conducted a recent survey showing that the dealer sells its vehicles at lower prices than any other licensee in its trade area and maintains records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

(s) Advertise any incentive offered by the manufacturer or distributor if the dealer is required to contribute to the cost of the incentive as a condition of participating in the incentive program, unless the dealer discloses in a clear and conspicuous manner that dealer participation may affect consumer cost.

For purposes of this subdivision, "incentive" means anything of value offered to induce people to purchase a vehicle, including, but not limited to, discounts, savings claims, rebates, below-market finance rates, and free merchandise or services.

(t) Display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

(u) Fail to disclose in writing to the franchisor of a new motor vehicle dealer the name of the purchaser, date of sale, and the vehicle identification number of each new motor vehicle sold of the line-make of that franchisor, or intentionally submit to that franchisor a false name for the purchaser or false date for the date of sale.

(v) Enter into a contract for the retail sale of a motor vehicle unless the contract clearly and conspicuously discloses whether the vehicle is being sold as a new vehicle or a used vehicle, as defined in this code.



(w) Use a simulated check, as defined in subdivision (a) of Section 22433 of the Business and Professions Code, in an advertisement for the sale or lease of a vehicle.

(x) Fail to disclose, in a clear and conspicuous manner in at least 10-point bold type on the face of any contract for the retail sale of a new motor vehicle that this transaction is, or is not, subject to a fee received by an autobroker from the selling new motor vehicle dealer, and the name of the autobroker, if applicable.

(y) As used in this section, the terms “make” and “model” have the same meaning as is provided in Section 565.3 of Title 49 of the Code of Federal Regulations.

(z) Advertise for sale or sell a used vehicle as “certified” or use any similar descriptive term in the advertisement or the sale of a used vehicle that implies the vehicle has been certified to meet the terms of a used vehicle certification program unless:

(1) The vehicle has not sustained damage that substantially impairs its use or safety to the buyer.

(2) The odometer on the vehicle indicates actual mileage, and has not been rolled back or otherwise altered to show fewer miles, or replaced with an odometer showing fewer miles than actually driven.

(3) The dealer has no actual knowledge that the vehicle has been repurchased by a dealer or manufacturer pursuant to a state or federal warranty statute.

(4) The title to the vehicle has not been inscribed with the notation “Lemon Law Buyback,” “manufacturer repurchase,” “salvage,” “junk,” “nonrepairable,” “flood,” or similar designation or title designation required by this state or another state.

(5) The vehicle has been inspected by a technician or technicians qualified to inspect for collision repair and mechanical condition.

(6) Prior to sale, the dealer provides the buyer with a completed inspection report indicating all the components inspected pursuant to the vehicle certification program and whether they meet the standards of the vehicle certification program.

(7) The dealer does not disclaim any warranties of merchantability on the vehicle.

(8) The vehicle is not sold “AS IS.”



(aa) (1) Nothing in subdivision (z) shall be construed to require that a seller offer a “certified” vehicle program.

(2) For purposes of this section, “dealer” means a person licensed pursuant to this article and primarily engaged in the business of selling or leasing motor vehicles under a conditional sale contract to a consumer.

(3) All requirements in subdivision (z) are minimum requirements, and do not preclude a seller from offering a “certification” program that is more protective of the buyer.

SEC. 6. Section 11713.16 is added to the Vehicle Code, to read:

11713.16. (a) It is unlawful and a violation of this code for a dealer to do any of the following:

(1) Negotiate the terms of a vehicle sale or lease contract and then add charges to the contract for any goods or services without previously disclosing the costs to the buyer of the goods and services to be added and obtaining the buyer’s consent.

(2) Inflate the amount of any installment payment or down payment or extend the maturity of a sale or lease contract for the purpose of disguising the actual charges for goods or services to be added by the dealer to the contract.

(b) For purposes of this section, the following terms have the following meanings:

(1) “Dealer” means a person primarily engaged in the business of selling or leasing motor vehicles under a conditional sale contract to a consumer.

(2) “Goods or services” means any type of good or service, including, but not limited to, insurance and service contracts.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Approved _____, 2004

Governor

